RE THE DETENTION OF MUHAMMAD NASRUL NAIM MOHD NAZIM

HIGH COURT MALAYA, JOHOR BAHRU
KAN WENG HIN JC
[CRIMINAL APPLICATION NO: JA-43-41-07-2024]
22 OCTOBER 2024

Abstract – *The police officer who appears before the Magistrate, in a remand application pursuant to s. 117 of the Criminal Procedure Code, need not necessarily be the same police officer making the investigation. The purpose of s. 117 is not hindered by the appearance of a police officer other than the investigating officer duly authorised by his superior so long as the police officer is knowledgeable of the circumstance of the remand and is able to answer the Magistrate's queries satisfactorily.*

CRIMINAL PROCEDURE: *Remand – Application – Police officer in charge of investigation unable to attend hearing of remand application before Magistrate – Another police officer authorised by superior officer to appear in remand proceeding – Magistrate dismissed application on ground that police officer in charge of investigation failed to attend hearing – Whether police officer making investigation should be same officer who has to appear before Magistrate in remand application – Criminal Procedure Code, ss. 117 & 323*

POLICE: *Duties of police – Investigation – Remand application – Whether police officer making investigation should be same officer who has to appear before Magistrate in remand application – Criminal Procedure Code, ss. 117 & 323 – Police Act 1967, s. 20*

WORDS & PHRASES: *'police officer making the investigation' – Whether police officer making investigation should be same officer who has to appear before Magistrate in remand application – Criminal Procedure Code, s. 117*

The suspect was arrested and investigated by the police under s. 4 of the Sedition Act 1948 and s. 232 of the Communications and Multimedia Act 1998. The police officer in charge of the investigation was one ASP Kathiresh. As the investigation could not be completed within 24 hours, the police filed an application for detention, pursuant to s. 117 of the Criminal Procedure Code ('CPC') ('encl. 1'). Filed together with encl. 1 was, *inter alia*, a letter with the heading 'kebenaran membaca reman bagi pihak pegawai penyiasat' ('encl. 6'), which stated that ASP Kathiresh would not be able to attend the remand hearing; another officer would be attending in his stead. The suspect was brought to the Magistrates' Court for the hearing of encl. 1. During the said hearing, the Magistrate did not accept the explanation in encl. 6 and, since ASP Kathiresh, *ie*, the police officer in

charge, failed to attend the hearing, the Magistrate proceeded to dismiss encl. 1. Hence, the present application for revision, pursuant to s. 323 of the CPC, against the decision of the Magistrate. The pivotal issue that arose was whether the police officer making the investigation should be the same officer who had to appear before the Magistrate in the remand application, as in s. 117(1) of the CPC.

Held (allowing revision):

(1) If one is to read into s. 117 of the CPC to mean that the police officer making the investigation must be the same police officer who would appear before the Magistrate in the remand proceeding, it could, in certain circumstances, create a dilemma for the police as it is not always possible for the same police officer to appear before the magistrate. Due to the nature of their work, tight deadlines and, especially where the accused must be produced before the Magistrate within 24 hours from the time of the arrest, the same police officer may not be able to appear before the Magistrate at the appointed time. In addition to s. 117 of the CPC, the Magistrate also needs to take into consideration the directions as set out in Arahan Amalan Ketua Hakim Negara Bilangan 11 Tahun 2021 ('practice direction'), issued by the Chief Justice of Malaysia. The practice direction deals with procedural matters in court to ensure uniformity in matters concerning remand application under s. 117 of the CPC. It is binding on the Magistrates' Courts in so far as it relates to the procedures of a remand application to be conducted by the Magistrate. (paras 11, 12 & 17)

(2) A perusal of the practice direction shows that, where it concerns the roles and duties of the police, the words used to describe the police are 'Pegawai Penyiasat Polis'. However, in s. 117, the words used are 'Pegawai polis yang membuat penyiasatan'. Since the term 'Pegawai Penyiasat Polis' is not defined in the practice direction or the CPC, it should be given its natural meaning of a police officer who has conduct of the investigation. The duties of the Pegawai Penyiasat Polis, as in the practice direction, are: (i) to file a complete copy of the investigating diary as in s. 119 of the CPC and any other relevant document before the hearing of the application; (ii) to determine whether the accused has his/her own legal representation or wishes to engage the services of a lawyer from the Yayasan Bantuan Guaman Kebangsaan; and (iii) to inform the Magistrate about the status of the remand, namely, whether the remand application is a new application or application to extend the remand. Therefore, so long as the abovementioned duties are fulfilled by an investigating police officer, there is no requirement that the same investigating police officer, who has conducted the investigation, should also be the one to appear before the Magistrate during the hearing of the application. By allowing a police officer, who is duly authorised by his superior officers to appear in the remand proceeding, as provided for in

s. 20 of the Police Act 1967, when the original police officer could not attend, does not, in any way, detract from the purpose of s. 117 of the CPC nor, in any way, affect the rights of an accused. (paras 18 & 19)

(3) The purpose of the remand as in s. 117 of the Criminal Procedure Code ('CPC') is to detain an accused for such a period of time as allowed by the Magistrate pending completion of the investigation, subject to the conditions imposed by s. 117(1) of the CPC. The purpose of the remand would still be served by allowing the appearance of another police officer who is authorised to appear, as the Magistrate must be satisfied that there is a nexus between the investigation and the detention sought. After all, failure on the part of the police officer to address the concern of the Magistrate would result in the remand order not being granted or a shorter remand period given. Hence, is there any injustice caused if the police officer making the investigation did not attend the remand application and instead another police officer attended on his behalf? In other words, is the accused's right affected by the non-attendance of the police officer making the investigation? The answer must surely be 'no'. (paras 32 & 33)

Case(s) referred to:

Azinal Sdn Bhd v. Jannath Gani & Ors And Other Appeals [2024] 4 CLJ 335 CA ***(refd)***
Chong Yong Yew v. PP [2010] 6 CLJ 938 HC ***(refd)***
DYTM Tengku Idris Shah Ibni Sultan Salahuddin Abdul Aziz Shah v. Dikim Holdings Sdn Bhd & Anor [2002] 2 CLJ 57 FC ***(refd)***
Hashim Saud v. Yahya Hashim & Anor [1977] CLJU 32; [1977] 1 LNS 32 FC ***(refd)***
Hassan Marsom & Ors v. Mohd Hady Ya'akop [2018] 7 CLJ 403 FC ***(refd)***
In Re Mohamad Ezam Mohd Nor [2002] 5 CLJ 156 HC ***(refd)***
In Re The Detention Of S Sivarasa & Ors [1997] 1 CLJ 471 HC ***(refd)***
Leonard Teoh Hooi Leong v. PP [2012] 10 CLJ 104 CA ***(refd)***
Quek Qin Long & Yang Lain lwn. PP [2024] 10 CLJ 625 HC ***(refd)***
Zaidi Kanapiah v. ASP Khairul Fairoz Rodzuan & Ors And Other Appeals [2021] 5 CLJ 581 FC ***(refd)***

Legislation referred to:

Communications and Multimedia Act 1998, s. 232
Criminal Procedure Code, ss. 28, 110(3), 111, 112, 116, 117(1), (1A), (2), (3), 119, 323(1)
Federal Constitution, art. 5
Interpretation Act 1948 and 1967, s. 17A
Penal Code, ss. 379, 420
Police Act 1967, s. 2
Sedition Act 1948, s. 4

For the applicant - Nur Aqilah Ahmad Rofaie; DPP
For the respondent - In person

Reported by Najib Tamby

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JUDGMENT

Kan Weng Hin JC:

Introduction

[1] This is an application for revision under s. 323 of the Criminal Procedure Code (Act 593) (CPC) against the decision of the Magistrate who had refused to grant a remand order under s. 117 CPC on 22 July 2024.

[2] This revision involves the question of whether the police officer making the investigation should be the same officer who has to appear in front of the Magistrate in the remand application as in s. 117(1) of the Criminal Procedure Code (CPC).

> Section 117. Procedure where investigation cannot be completed within twenty-four hours.
>
> (1) Whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 28 and there are grounds for believing that the accusation or information is well founded the police officer making the investigation shall immediately transmit to a Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case and shall at the same time produce the accused before the Magistrate.

[3] Generally, this would not be a problem, as the police officer making the investigation would be the same one to appear before the Magistrate. However, what if the police officer making the investigation cannot appear for whatever reasons and instead another police officer duly authorised by his superior appears on that day before the Magistrate? Should the Magistrate decline to entertain the remand application on that basis? This is what happened in this case. The facts of our case are as follows:

(i) a police report was lodged by the complainant regarding a posting on Twitter, now known as "X" in which the complainant believed to be seditious and defamatory of His Royal Highness Regent and Crown Prince of Johor;

(ii) On 22 July 2024 at about 3.40am, the suspect was arrested by the police at Dengkil, Selangor. The case was investigated under s. 4 of the Sedition Act 1948 and s. 232 of the Communications and Multimedia Act 1998. The police officer in charge of investigation was ASP Kathiresh a/p Rajagopal (ASP Kathiresh);

(iii) as the police could not complete their investigation within 24 hours, the police had filed an application for detention under s. 117 of the CPC, filed together with the application (encl. 1), were the complainant's police report (encl. 2), arrest report (encl. 3), investigation diary (encl. 5), a letter with the heading "kebenaran membaca reman bagi

pihak pegawai penyiasat" (encl. 6) and a supporting letter to encl. 6 (encl. 4). In encl. 6, DSP Kamaliddin bin Othman, Ketua Bahagian Siasatan Jenayah, Johor Bahru, had informed the court that ASP Kathiresh had to attend a case briefing at the Crime Investigation Department, Bukit Aman, Kuala Lumpur and would not be able to attend the remand hearing. In his place, ASP Afdhal Muhammad bin Mat Saupi would be attending instead; and

(iv) the hearing of encl. 1 was fixed for the same morning as the arrest. The suspect was brought to Johor Bahru Magistrate Court for the hearing. During the hearing of the remand application, the Magistrate did not accept the explanation as in encl. 6 and since the police officer in charge of the investigation (ASP Kathiresh) had failed to attend the hearing, he proceeded to dismiss the application. The minutes of the court proceedings are stated as follow:

ASP: Saya Wakil Reman Sahaja. Pegawal Penyiasat Asp Kathiresh a/l Rajagopal

M : ASP Hadi Sebagai Wakil Sahaja Atau Akan Ambil Alih Siasatan/Sambung Siasatan?

IO : Saya Dapat Arahan Untuk Wakil Reman Sahaja

M : ASP Aware Berkenaan Kes MT ((JA-43-28/2024 PP Lwn Quek Qin Long)) Berkenaan Isu Wakil Pegawal Penyiasat.

IO : Ya. Faham.

M : Permohonan Reman Ditolak. Alasan Pegawai Penyiasat Tidak Hadir. Alasan Yang Dikemukakan Gagal Menjustifikasi Perwakilan. Dan Wakil Yang Hadir Membacakan Reman Tidak Mengambil Alih Siasatan/Menyambung Siasatan.

[4] The need for strict compliance with the provision of s. 117 of the CPC has been explained in the off-cited case of *In Re The Detention of S Sivarasa & Ors* [1997] 1 CLJ 471, Also, the case of *Hassan Marsom & Ors v. Mohd Hady Ya'akop* [2018] 7 CLJ 403; [2018] 5 MLJ 141.

[5] Under s. 117 of the CPC the duties of the police officer making the investigation are two fold namely:

(i) to immediately transmit to a Magistrate a copy of the entries in the diary, particulars of it are set out in s. 119 of the CPC and;

(ii) at the same time produce the accused before the Magistrate. Failure to do either one would mean that the remand application is irregular and the application dismissed by the Magistrate.

[6] In hearing of the remand application, the Magistrate has to be satisfied that the information and reasons given by the police are valid. In the event that the Magistrate has any queries regarding the application, the police officer in attendance before the Magistrate will have to answer the queries that may arise from the police diary to the satisfaction of the Magistrate. At this stage the Magistrate should confine himself to the information as set out in the police diary. Needless to say, mere production of the police diary does not mean that the remand would automatically be ordered.

[7] However, since the words used in s. 117 of the CPC are that of the police officer making the investigation, the issue is who is the police officer making the investigation and whether the police officer who is conducting the investigation must also be the same police officer to appear before the Magistrate in the hearing of the remand application.

[8] The definition of police officer as defined in s. 2 of the Police Act 1967 reads as follow:

> police officer" means any member of the Royal Malaysia Police;
>
> "police district" or "police division" means any area designated as such by the Inspector General under paragraph 6(b) and unless and until areas are so designated, means any area constituted or recognized as a police district or police division at the commencement of this Act;

[9] Though it is not defined, the words 'police officer making an investigation' have appeared in the following sections of the CPC namely:

> Section 111. Police officer's power to require attendance of witnesses.
>
> (1) A police officer making an investigation under this Chapter may by order in writing require the attendance before himself of any person who from the information given or otherwise appears to be acquainted with the circumstances of the case, and that person shall attend as so required.
>
> Section 117. Procedure where investigation cannot be completed within twenty-four hours.
>
> (1) Whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 28 and there are grounds for believing that the accusation or information is well founded the police officer making the investigation shall immediately transmit to a Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case and shall at the same time produce the accused before the Magistrate.
>
> Section 118. Police officer may require bond for appearance of complainant and witnesses.
>
> (1) If upon a police investigation made under this Chapter it appears to the officer making the investigation that there is sufficient evidence or reasonable ground of suspicion to justify the commencement or

continuance of criminal proceedings against any person, the officer shall require the complainant, if any, and so many of the persons who appear to the officer to be acquainted with the circumstances of the case, as he thinks necessary, to execute a bond to appear before a Magistrate's Court therein named and give evidence in the matter of the charge against the accused.

Section 119. Diary of proceedings in investigation.

(1) Every police officer making a police investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary setting forth:

(a) the time at which the order, if any, for investigation reached him;

(b) the time at which he began and closed the investigation;

(c) the place or places visited by him; and

(d) a statement of the circumstances ascertained through his investigation.

Section 120. Report of police officer.

(1) Every police investigation under this Chapter shall be completed without unnecessary delay, and the officer making the investigation shall, unless the offence is of a character which the Public Prosecutor has directed need not be reported to him, submit to the Public Prosecutor a report of his investigation together with the investigation papers in respect of such investigation within one week of the expiry of the period of three months from the date of the information given under section 107.

(2) Notwithstanding subsection (1), the Public Prosecutor rnay at any time, regardless that the period of three months mentioned in subsection (1) has not expired, direct the officer making the investigation or the Officer in charge of the Police District to submit to the Public Prosecutor a report in the form in the Second Schedule and the investigation papers in respect of the police investigation.

[10] If one is to look into the context in which the phrase 'police officer making an investigation' in the aforesaid sections is used, it is in Part V with the heading "Information to Police And Their Power to Investigate". In Part V, the police officer performs different roles in the process of their investigation and is not limited to one person especially where there may be numerous witnesses or more than one accused involved for example:

(a) Police officer making a police investigation may search or cause a search to be made in any place for any documents or other things which are necessary for the investigation ... (s. 116 of the CPC)

(b) Police officer making the investigation has to transmit a copy of the police diary to the Magistrate for the hearing of the remand proceeding. (s. 117 of the CPC)

A (c) Police officer making the investigation to produce the accused before the Magistrate within 24 hours from time of arrest. (s. 117 of the CPC)

(d) Police officer making a police investigation shall record the day to day proceedings of the investigation in his diary (s. 119 of the CPC)

B (e) Police officer making the investigation shall submit a report of his investigation to the Public Prosecutor (s. 120 of the CPC).

[11] Hence if one is to read into s. 117 of the CPC to mean that the police officer making the investigation must be the same person to appear before the Magistrate in the remand proceeding, it could in certain circumstances create a dilemma for the police, as it is not always possible for the same police C officer to appear before the Magistrate.

[12] Due to the nature of their work, tight deadlines and, especially where the accused must be produced before the Magistrate within 24 hours from the time of arrest, the same officer may not be able to appear before the D Magistrate at the appointed time.

[13] The principal purpose of a remand is to enable the police to extend the detention of the accused to enable completion of the investigation. The detention is necessitated by the need to prevent the accused from absconding, interfering with the evidence and/or witnesses, subject always to the E discretion of the Magistrate as in s. 117(2) of the CPC. See the case of *In Re Mohamad Ezam Mohd Nor* [2002] 5 CLJ 156.

[14] It is trite that the Magistrate in the exercise of his judicial function must be satisfied that there is sufficient information to grant or not to grant the remand. The order of the Magistrate authorising the detention of F the accused under s. 117 of the CPC is a judicial act. See the case of *Zaidi Kanapiah v. ASP Khairul Fairoz Rodzuan & Ors And Other Appeals* [2021] 5 CLJ 581; [2021] 3 MLJ 759.

[15] Hence, the Magistrate in the exercise of his discretion, must ensure there is an equitable balance between the rights and personal liberty of the G accused who has not been proven guilty of an offence against the equally important public interest to have the perpetrator of the offence apprehended and dealt with in accordance with the law. This must necessarily include the duty of police to investigate crimes. See the case of *Hassan Marsom & Ors v. Mohd Hady Ya'akop* [2018] 5 MLJ 141 at p. 159 where His Lordship had H said as follow:

> [50] In considering an application for a remand order, a Magistrate must balance fairly between the right of a personal liberty of an individual who has not been proven guilty of an offence, against the equally important public interest *vis-a-vis* the duty of the police to investigate crimes. It

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involves an exercise of discretion and that discretion must be exercised judicially and is subject to the court's scrutiny (*Hashim bin Saud v Yahaya bin Hasim & Anor* [1977] 1 MLJ 259 and *Chong Fook Kam & Anor v Shaaban & Ors* [1968] 2 MLJ 50). KC Vohrah J in *Re Detention of R Sivarasa & Ors* said:

> Section 117 also requires that there be grounds for believing that the accusation or information is well founded for the police officer to make his application for detention. These grounds, needless to say, are subject to judicial scrutiny.

[16] At the hearing of the remand, a copy of the police diary containing the necessary information as prescribed by s. 119 of the CPC would have been transmitted to the Magistrate. Should there be any queries or information which the Magistrate may require, then the police officer in attendance must be able to answer it. Failure to do so means that the Magistrate in the exercise of his discretion is entitled to dismiss the application for remand. The Magistrate retains the substantive discretion to consider after reviewing all the relevant documents produced, whether to order a remand, and if ordered, to determine the length of the remand. See the Court of Appeal case of *Leonard Teoh Hooi Leong v. PP* [2012] 10 CLJ 104; [2010] 3 MLJ 373.

[17] In addition to s. 117 of the CPC, the Magistrate also needs to take into consideration the directions as set out in the practice direction dated 10 September 2021 (Arahan Amalan Ketua Hakim Negara Bilangan 11 Tahun 2021) issued by the Chief Justice of Malaysia. This practice direction deals with the procedural matters in court to ensure uniformity in matters concerning remand application under s. 117 of the CPC. It is binding on the Magistrates' Courts in so far as it relates to the procedures of a remand application to be conducted by the Magistrate. A copy of which is set out below:

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KETUA HAKIM NEGARA
MAHKAMAH PERSEKUTUAN
MALAYSIA
PUTRAJAYA

CHIEF JUSTICE
FEDERAL COURT
MALAYSIA

B

PKPMP.PKHN.600-3/3/1

10 September 2021

C

Hakim Mahkamah Sesyen
Mahkamah Sesyen
Seluruh Malaysia

Majistret
Mahkamah Majistret
Seluruh Malaysia

D

Timbalan Pendaftar / Penolong Kanan Pendaftar
Mahkamah Tinggi Seluruh Malaysia

Penolong Kanan Pendaftar / Penolong Pendaftar
Mahkamah Rendah Seluruh Malaysia

E

ARAHAN AMALAN KETUA HAKIM NEGARA
BILANGAN 11 TAHUN 2021
PENGENDALIAN PROSIDING PERMOHONAN REMAN DI BAWAH SEKSYEN 117 KANUN TATACARA JENAYAH

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PADA menjalankan kuasa yang diberikan oleh seksyen 107A Akta Mahkamah Rendah 1948 [*Akta 92*], saya, setelah berunding dengan YAA Presiden Mahkamah Rayuan, YAA Hakim Besar Mahkamah Tinggi di Malaya dan YAA Hakim Besar Mahkamah Tinggi di Sabah dan Sarawak,

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mengeluarkan Arahan Amalan ini bagi mengemas kini tatacara dan memastikan keseragaman amalan berhubung dengan pengendalian prosiding Permohonan Reman di bawah seksyen 117 Kanun Tatacara Jenayah [*Akta 593*] ("KTJ") bagi Mahkamah di seluruh Malaysia seperti yang berikut:

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Istana Kehakiman, Aras 5, Presint 3, 62506 Putrajaya
Tel : 03-88803502 Fax : 03-88803507

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PEMAKAIAN ARAHAN AMALAN

2. Arahan Amalan ini terpakai bagi pengendalian prosiding Permohonan Reman di bawah seksyen 117 KTJ di seluruh Malaysia. B

TAFSIRAN

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3. Dalam Arahan Amalan ini, melainkan jika konteksnya menghendaki makna yang lain—

"Majistret" mempunyai erti yang sama sebagaimana yang diperuntukkan dalam Akta Mahkamah Rendah 1948; D

"Permohonan Reman" ertinya apa-apa permohonan yang dikemukakan oleh Pegawai Penyiasat Polis di hadapan Majistret bagi mendapatkan suatu perintah tahanan di bawah seksyen 117 KTJ; E

"sistem e-Kehakiman" ertinya mana-mana sistem aplikasi Mahkamah yang dibangunkan oleh Pejabat Ketua Pendaftar Mahkamah Persekutuan Malaysia bagi urusan dan prosiding Mahkamah. F

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TATACARA PENGENDALIAN PROSIDING PERMOHONAN REMAN DI BAWAH SEKSYEN 117 KANUN TATACARA JENAYAH

B 4. Selaras dengan peruntukan seksyen 117 KTJ, Pegawai Penyiasat Polis hendaklah memastikan pematuhan kepada perkara-perkara yang berikut:

C (a) sebelum Permohonan Reman didengar di hadapan Majistret, dokumen-dokumen yang berikut telah difailkan melalui sistem e-Kehakiman:

D (i) Permohonan Reman;

(ii) salinan diari siasatan yang lengkap di bawah seksyen 119 KTJ; dan

E (iii) apa-apa dokumen lain yang berkaitan dengan permohonan reman tersebut; dan

(b) orang yang disyaki ("OYDS") dikemukakan di hadapan Majistret.

F 5. Sebelum pengendalian prosiding Permohonan Reman dimulakan, OYDS hendaklah mengesahkan kepada Majistret perkara-perkara yang berikut:

G (a) bagi OYDS yang mempunyai peguam, OYDS telah diberi peluang untuk menghubungi peguamnya; dan

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(b) bagi OYDS yang belum melantik peguam, OYDS telah menyatakan hasrat untuk diwakili oleh mana-mana peguam pilihannya.

6. Bagi OYDS yang tidak diwakili oleh peguam atau tidak berkeupayaan untuk melantik peguam, OYDS tersebut akan dimaklumkan oleh Majistret akan hak OYDS untuk mendapatkan khidmat bantuan guaman daripada Yayasan Bantuan Guaman Kebangsaan ("YBGK") sekiranya OYDS memenuhi syarat-syarat yang berikut:

(a) OYDS adalah seorang warganegara; dan

(b) OYDS tidak disiasat di bawah mana-mana undang-undang pencegahan, penculikan dan melarikan orang.

7. Bagi maksud perenggan 5 dan 6, Pegawai Penyiasat Polis hendaklah memastikan bahawa, bagi OYDS yang—

(a) telah melantik peguam, peguam yang mewakili OYDS telah dihubungi;

(b) belum melantik peguam, tetapi berhasrat untuk melantik peguam pilihannya sendiri, peguam tersebut telah dihubungi; atau

(c) berhasrat untuk mendapatkan perkhidmatan peguam YBGK, pihak YBGK telah dihubungi.

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dan peguam tersebut telah dimaklumkan agar hadir bagi tujuan pengendalian prosiding Permohonan Reman tersebut.

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8. Tertakluk kepada perenggan 7, pengendalian prosiding Permohonan Reman hendaklah ditangguhkan kepada suatu tempoh masa yang munasabah, dalam hari yang sama, bagi membolehkan peguam hadir untuk mewakili OYDS.

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9. Walau apa pun peruntukan dalam perenggan 8, pengendalian prosiding Permohonan Reman akan diteruskan sekiranya—

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(a) OYDS tidak mahu diwakili oleh peguam dan/atau enggan mendapatkan khidmat bantuan guaman YBGK; atau

(b) tiada peguam yang hadir setelah tempoh masa munasabah diberikan.

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10. Semasa mengendalikan prosiding Permohonan Reman, Majistret hendaklah dimaklumkan oleh—

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(a) Pegawai Penyiasat Polis berkaitan dengan status Permohonan Reman tersebut sama ada ia adalah suatu Permohonan Reman baharu atau lanjutan;

(b) OYDS berkaitan dengan layanan terhadapnya semasa dalam tahanan pihak polis; dan

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(c) OYDS berkaitan dengan keadaan kesihatannya.

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11. Bagi maksud perenggan 10(c), sekiranya Majistret mendapati bahawa OYDS memerlukan rawatan, Pegawai Penyiasat Polis hendaklah memastikan bahawa OYDS tersebut dibawa ke hospital bagi tujuan pemeriksaan dan rawatan yang sewajarnya.

12. Semasa pengendalian prosiding Permohonan Reman, Peguam OYDS hendaklah mengemukakan representasi kepada Majistret.

13. Tanpa menjejaskan kuasa dan budi bicara untuk mempertimbangkan Permohonan Reman serta menetapkan tempoh bagi apa-apa perintah reman yang akan diberikan, Majistret dalam menjalankan kuasanya boleh membuat rujukan kepada keputusan-keputusan kes Mahkamah Atasan yang terkini dan *Bench Book (Criminal Law)* yang dikeluarkan oleh Badan Kehakiman Malaysia yang menyentuh mengenai isu reman.

SUSUNAN KEUTAMAAN BAGI PENGENDALIAN PROSIDING PERMOHONAN REMAN DALAM KETIADAAN MAJISTRET

14. Dalam ketiadaan Majistret, prosiding Permohonan Reman yang melibatkan siasatan berkenaan apa-apa kesalahan jenayah—

(a) yang boleh dihukum dengan hukuman mati atau penjara untuk tempoh 14 tahun atau lebih;

(b) yang melibatkan OYDS yang merupakan individu berprofil tinggi;

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(c) di bawah Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 [*Akta 694*]; dan

(d) yang disifatkan sebagai berkepentingan awam,

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hendaklah dikendalikan oleh Majistret *ex-officio* mengikut keutamaan seperti yang berikut:

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(a) Hakim Mahkamah Sesyen;

(b) Timbalan Pendaftar Mahkamah Tinggi di Malaya (bagi Permohonan Reman di Semenanjung Malaysia sahaja);

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(c) Penolong Kanan Pendaftar Mahkamah Tinggi di Malaya (bagi Permohonan Reman di Semenanjung Malaysia sahaja);

(d) Penolong Kanan Pendaftar Mahkamah Rendah; atau

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(e) mana-mana pegawai lain seperti yang disenaraikan di bawah Jadual Keempat Akta Mahkamah Rendah 1948.

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LOKASI DAN HARI PENGENDALIAN PROSIDING PERMOHONAN REMAN

15. Semua prosiding Permohonan Reman hendaklah dikendalikan—

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(a) di Mahkamah atau di mana-mana pusat tahanan yang telah diwartakan untuk tujuan reman; dan

(b) pada setiap hari termasuk hari cuti hujung minggu dan cuti umum.

TARIKH PERMULAAN KUAT KUASA

16. Arahan Amalan ini mula berkuat kuasa pada 15 September 2021.

PEMBATALAN

17. Arahan Amalan Ketua Hakim Negara Bil. 3/2003 Perintah Penahanan di bawah Seksyen 117 Kanun Prosedur Jenayah (KPJ) dan perenggan 2A Pekeliling Ketua Pendaftar Bil. 1 Tahun 2012 (Garis Panduan Reman dan Pengendalian Kes-Kes Jenayah Selaras Dengan Penubuhan Yayasan Bantuan Guaman Kebangsaan) adalah dibatalkan.

TUN TENGKU MAIMUN BINTI TUAN MAT
Ketua Hakim Negara
Istana Kehakiman
Putrajaya

[18] A perusal of the Arahan Amalan 11/2021 shows that where it concerns the role and duties of the police, the words used to describe the police are Pegawai Penyiasat Polis (Investigating Police Officer), see paras. 4, 7 and 10 of the Arahan Amalan 11/2021. However, in s. 117 of the CPC the words used are Pegawai Polis yang membuat Penyiasatan (Police Officer making the investigation). Since the term Pegawai Penyiasat Police is not defined in Arahan Amalan 11/2021 or the CPC, it should be given its natural meaning of a police officer who has conduct of the investigation. The duties of the Pegawai Penyiasat Polis as in the Arahan Amalan 11/2021 are as follow:

(i) to file a complete copy of the investigating diary as in s. 119 of the CPC and any other relevant document before the hearing of the application (para. 4);

(ii) to determine whether the accused has his/her own legal representation or wishes to engage the services of a lawyer from YBGK and to inform the lawyer accordingly (para. 7); and

(iii) to inform the Magistrate about the status of the remand, namely whether the remand application is a new application or application to extend the remand (para. 10).

[19] Hence, so long as the above-mentioned duties are fulfilled by an investigating police officer, there is no requirement that the same investigating police officer who has conducted the investigation should also be the one to appear before the Magistrate during the hearing of the application.

[20] In fact, in s. 28 of the CPC, it is provided that the police officer who is making the arrest has to send or take the person arrested before a Magistrate within 24 hours from time of arrest. See s. 28 of the CPC below:

> Section 28. How person arrested is to be dealt with and detention for more than twenty-four hours.
>
> (1) A police officer making an arrest without a warrant shall without unnecessary delay and subject to the provisions herein as to bail or previous release take or send the person arrested before a Magistrate.
>
> (2) No police officer shall detain in custody a person arrested without a warrant for a longer period than under all the circumstances of the case is reasonable.
>
> (3) Such period shall not in the absence or after the expiry of a special order of a Magistrate under section 117 exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate.

[21] Again, the emphasis is on the rights of the accused to be brought before the Magistrate as soon as it is clear that the detention would exceed 24 hours from the time of arrest. This is to safeguard the rights of the accused as enshrined in art. 5 of the Federal Constitution. This need not necessarily be done by the same police officer, whether it is the investigating officer or arresting officer, so long as the rights of the accused are not affected.

[22] This issue of whether it needs to be the same investigating police officer who has conducted the investigation to also be present before the Magistrate in the remand application has been raised and dealt with in two High Court decisions. I shall now proceed to deal with it.

Chong Yong Yew v. PP [2010] 6 CLJ 938.

(i) the applicant was arrested for being involved in the stealing of scrap metal from Pelabuhan Tanjung Pelepas under s. 379 of the Penal Code (PC) as well as cheating by under-declaring the weight of the scrap metal under s. 420 of the PC. The investigating officer was Sjn/PB Mohd Affendi Kasidi;

(ii) an application for remand was made to the Magistrate. At the hearing of the remand application, SM/PB Alias who was the assistant investigating officer appeared instead of Sjn/PB Mohd Affendi Kasidi. Various objections to the application were raised by the accused counsel before the Magistrate. The objections were dismissed and the remand of four days was granted by the Magistrate. The applicant was unhappy with the decision and filed a revision of the decision under s. 323 of the CPC. Among the objections raised before the court was whether the attendance of a representative of the investigating officer and not the investigating officer himself in the remand proceeding is in breach of s. 117 of the CPC; and

(iii) the learned judge held that the word investigating officer in s. 117 of the CPC should not be read literally. So long as the representative of the investigating officer including the assistant investigating officer has personal knowledge of the facts and steps taken and to be taken in the investigation, he/she can appear in the remand application. Further there was a directive from JSJ Bukit Aman which gave the investigative power including the power to arrest to the investigative officer as well as the assistant investigative officer.

Quek Qin Long & Yang Lain lwn. PP [2024] 10 CLJ 625.

(i) the accused together with four others were arrested on suspicion of stealing a truck pursuant to a Pelangi Police Report No: 003716/2024. On 22 May 2024, at the hearing of the remand application where Sjn Muhammad had appeared on behalf of the police instead of Sjn

Micheal who was the investigating officer in charge of the investigation, the Magistrate granted a two-day remand against all five accused. On 23 May 2024, at the hearing of the application to extend the initial two days remand, the Magistrate dismissed the application;

(ii) counsel for the five accused who was unhappy with the first remand order granted on 22 May 2024 filed a revision under s. 323(1) of the CPC to the High Court against the remand order. Among the objections raised by the accused's counsel, is the issue of whether in an application for remand, the officer making the investigation can be represented by anyone or the replacement investigating officer?

(iii) the learned judge held that since an application for remand concerned the liberty of an individual, s. 117 of the CPC should be interpreted strictly. After going through the requirements as set out in s. 117(3) of the CPC and s. 119 of the CPC, he opined that the police officer who is making the investigation must be the same police officer to appear before the Magistrate in the remand application. The learned judge went on to state that the Arahan Amalan 11/2021 also requires the same investigating police officer to appear before the Magistrate in the remand application. As such, the replacement investigating police officer does not have *locus* to attend in the remand application and the first remand order granted on 22 May 2024 was invalid.

[23] In the interpretation of s. 117 of the CPC, the court should adopt the purposive approach. After all, even in cases involving the interpretation of the articles of the Federal Constitution, the Federal Court has adopted the purposive approach. See the case of *DYTM Tengku Idris Shah Ibni Sultan Salahuddin Abdul Aziz Shah v. Dikim Holdings Sdn Bhd & Anor* (Haidar FCJ) [2002] 2 CLJ 57; [2002] 2 MLJ 11.

[24] The purposive approach has also been used by the Court of Appeal in the recent case of *Azinal Sdn Bhd v. Jannath Gani & Ors And Other Appeals* [2024] 4 CLJ 335; [2024] 2 MLJ 526 at p. 347 (CLJ); p. 536 (MLJ):

> [21] Now, apart from the debate on the nature of the right of appeal (whether substantive or procedural) the parties failed to consider the manner and method that statutes ought to be read or interpreted. Indeed, a literal interpretation of a statute is only BUT ONE method out of numerous other valid methods of statutory interpretation.
>
> [22] One of the celebrated methods of statutory interpretation would be the PURPOSIVE APPROACH to statutory interpretation. This purposive approach becomes exceedingly necessary and relevant, when the literal reading of the act (notwithstanding principal or amendment act) would lead to an undesirable meaning or effect that flouts the legislative intent of parliament or the provision.

[25] As pointed out by the Federal Court in *DYTM Tengku Idris Shah Ibni Sultan Salahuddin Abdul Aziz Shah v. Dikim Holdings Sdn Bhd & Anor* (*supra*) the purposive approach has been given statutory recognition by Parliament by enacting s. 17A of the Interpretation Acts 1948 and 1967 (Act 388) which reads:

> Section 17A. Regard to be had to the purpose of Act.
>
> In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

[26] In applying the purposive approach to our case, the court has to consider the purposes for which s. 117 of the CPC was enacted. The wordings of s. 117(1) of the CPC are *verbatim* as in s. 117(1) Criminal Procedure Code of the Federated Malay States (F.M.S. Cap 6) except for the word "immediately" and "produce" which replace the word "forthwith" and "forward" in s. 117(1) of the FMS Cap 6 respectively,

[27] With effect from 1 March 2017, s. 117 of the CPC was amended pursuant to Act A1521 by adding s. 117(1A) of the CPC to allow the Public Prosecutor to appear in any remand application which reads as follow:

> Section 117 of the Code is amended by inserting after subsection (1) the following subsection:
>
> (1A) The Public Prosecutor may appear in any application made under this section.

[28] As noted in the Hansard, the explanation given by the Minister to Parliament on the amendment of s. 117 of the CPC by incorporating s. 117(1A) of the CPC, was as follows:

> Tuan Yang di-Pertua, beberapa Ahli Yang Berhormat telah menyatakan bahawa pindaan kepada seksyen 117 yang membenarkan Pendakwa Raya untuk hadir dalam prosiding reman dikhuatiri akan menyebabkan tiada pengasingan kuasa antara peranan sebagai penyiasat, pendakwa dan hakim. Kehadiran Pendakwa Raya adalah bergantung kepada jenis kes yang disiasat terutamanya bagi kes-kes kepentingan awam dan negara. Tujuan kehadiran Pendakwa Raya atau Timbalan Pendakwa Raya yang diberi kuasa ialah untuk memastikan terdapat alasan yang mencukupi di sisi undang-undang untuk tahanan reman dibuat dalam tempoh reman yang diperlukan.

[29] Hence, as stated in the explanation in Hansard, the amendment to allow the appearance of the Public Prosecutor was necessary to safeguard the interest of the public and country. It is timely to remind ourselves that the right of the public to feel safe and secure in their surroundings must be given

due recognition as well. As aptly said in the case of *Hashim Saud v. Yahya Hashim & Anor* [1977] CLJU 32; [1977] 1 LNS 32; [1977] 2 MLJ 116 (FC) where His Lordship Raja Azlan Shah FJ (as His Lordship then was) had said at p. 118:

> ... But justice does not mean only for the accused; it also means the interests of the State, and not enough is paid to the interests of the State. We have a shocking prevalence of crime, and of crimes of violence, infractions of the plainest requirements of civilised society about which there is no debate. Our capacity to protect life and property itself is in question. There is a manifest failure to secure, through an adequate administration of our criminal laws an appropriate punishment of crimes, the deterrent effects which are in large part the object of these laws.

[30] By allowing a police officer who is duly authorised by his superior officers to appear in the remand proceeding as provided for in s. 20 of the Police Act when the original police officer could not attend does not in any way detract from the purpose of s. 117 of the CPC nor in anyway affect the rights of the accused.

> Section 20. General duties of police officers.
>
> (1) Every police officer shall perform such duties and exercise such powers as are by law imposed or conferred upon a police officer, and shall obey all lawful directions in respect of the execution of his office which he may from time to time receive from his superior officers in the Force.

[31] However in s. 110(3) of the CPC where the police officer has deputised his subordinate officer under s. 110 of the CPC, the deputised subordinate officer cannot use any of the powers given by ss. 111, 112, 116 and 117 of the CPC.

> Section 110. Procedure where seizable offence suspected.
>
> (3) Where a police officer exercises the power of deputation given by subsection (1) the subordinate officer so deputed shall not be entitled to use any of the powers given by sections 111, 112, 116 and 117.

[32] At all times the purpose of the remand as in s. 117 of the CPC is to detain the accused for such a period of time as allowed by the Magistrate pending completion of the investigation subject to the conditions as imposed by s. 117(1) of the CPC. The purpose of the remand would still be served by allowing the appearance of another police officer who is authorised to appear as the Magistrate must be satisfied that there is a nexus between the investigation and the detention sought. After all, failure on the part of the police officer to address the concern of the Magistrate would result in the remand order not being granted or a shorter remand period given.

[33] Hence, is there any injustice caused if the police officer making the investigation did not attend the remand application and instead another police officer attended on his behalf? In other words, is the accused's right affected by the non-attendance of the police officer making the investigation? The answer must surely be 'No'. I fail to see how the rights of the accused as provided in art. 5 of the Federal Constitution or s. 117 of the CPC were affected.

[34] For reasons set out above, I allowed the revision. It can be seen that the purpose of s. 117 is not hindered by the appearance of a police officer other than the investigating officer duly authorised by his superior as long as the police officer is knowledgeable of the circumstances of the remand and is able to answer the Magistrate's queries satisfactorily.